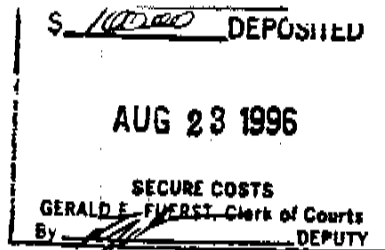


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CELESTINE
CLERK

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

314064

ALPH WHITAKER
1424 West True Road
Lak Harbor, Ohio 43449
Individually and on behalf of all similarly
situated persons who as employees were
exposed to airborne Beryllium at
manufacturing facilities owned by
Brush Wellman, Inc.)

and

MARY JANE WHITAKER
1424 West True Road
Lak Harbor, Ohio 43449
Individually and on behalf of all similarly
situated persons who are family members
of employees exposed to
airborne Beryllium at manufacturing
facilities owned by Brush Wellman, Inc.),

and

CHARL FILLMORE
115 West State Street
Akron, Ohio 43420
Individually and on behalf of all similarly
situated persons who as employees were
exposed to airborne Beryllium at
manufacturing facilities owned by
Brush Wellman, Inc.)

and

JANE FILLMORE
115 West State Street

CASE NO.

JUDGE



097 PATRICIA A. CLEARY

Fremont, Ohio 43420
(Individually and on behalf of all similarly
situated persons who are family members
of employees exposed to
airborne Beryllium at manufacturing
facilities owned by Brush Wellman, Inc.),

Plaintiffs,

v.

BRUSH WELLMAN INC.
17876 St. Clair Avenue
Cleveland, Ohio 44110,

Defendant.

COMPLAINT (CLASS ACTION) -
(JURY TRIAL DEMANDED)

For their Complaint, Plaintiffs allege as follows:

PARTIES

1. Ralph Whitaker is an individual residing at 14424 West True Road, Oak Harbor, Ohio. He was employed at Brush Wellman full time for many years, where he was exposed to airborne Beryllium dust. He has been diagnosed with chronic beryllium disease.

2. Mary Jane Whitaker is an individual residing at 14424 West True Road, Oak Harbor, Ohio, and is Ralph Whitaker's wife.

3. Richard Fillmore is an individual residing at 3915 West State Street, Fremont, Ohio. He was employed for many years at Brush Wellman, where he was exposed to airborne Beryllium dust. He has been diagnosed with

chronic beryllium disease.

4. Diane Fillmore is an individual who resides at 3915 West State Street, Fremont, Ohio, and is Richard Fillmore's wife.

5. Brush Wellman is now and was at all relevant times hereto a corporation duly organized and existing under the laws of the State of Ohio, having its principal place of business in Cleveland, Ohio.

CLASS ACTION ALLEGATIONS

6. Plaintiffs bring this action pursuant to the rules of 23(A); 23(B)(1) (a); 23(B)(1)(b); 23(B)(2); and 23(B)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all current and former employees of Brush Wellman who have worked at Brush Wellman for any time during the period from 1949 to the present; and all family members of said current or former employees.

7. Plaintiffs believe that the number of Brush Wellman employees, former employees, and family members are so numerous that joinder of all the class members is impracticable. While the exact number of class members is unknown to Plaintiffs at this time, Plaintiffs believe that there are at least 8,000 members of the class.

8. Among the questions of law and fact common to the class are:

A. Whether Brush Wellman has committed "an intentional tort" as defined in Ohio law;

- B. Whether airborne Beryllium dust is a dangerous condition within the business operation of Brush Wellman;**
- C. Whether Brush Wellman, at the relevant times, had knowledge of said dangerous condition within its business operation;**
- D. Whether employees subject to airborne Beryllium dust are substantially certain to be injured in the future due to said exposure;**
- E. Whether Brush Wellman had knowledge that if employees are subjected to airborne Beryllium dust, they are substantially certain to be injured thereby;**
- F. Whether Brush Wellman did act to require its employees to work in conditions where they would be exposed to airborne Beryllium dust knowing that injury was substantially certain to occur;**
- G. Whether adhering to the OSHA standard for Beryllium exposure does in fact adequately protect employees from the harm of airborne Beryllium dust;**
- H. Whether Brush Wellman fraudulently concealed from employees and the public the true level of danger from exposure to airborne Beryllium dust at the manufacturing facilities of Brush Wellman;**
- I. Whether the acts or omissions of Defendant Brush Wellman demonstrate malice, aggravated or egregious fraud, oppression, or insult so as to justify punitive damages;**

- J. Whether Plaintiffs have incurred actual damages from the acts or omissions of Defendant that allegedly constitute malice, aggravated or egregious fraud, oppression, or insult;
- K. Whether the alleged intentional tort of Brush Wellman caused injury to employees;
- L. Whether Brush Wellman should be ordered to establish a fund that would pay for reasonable monitoring and surveillance services for employees, including scientific studies of adverse health effects to class members from exposure to airborne Beryllium.

9. Plaintiffs' claims are typical of the class members' claims.

Plaintiffs will fairly and adequately represent the interests of the members of the class. Plaintiffs have retained legal counsel competent and experienced in class, personal injury, and related litigation to seek to recover damages for lost income, damages for emotional distress, damages for diminished ability to secure employment and insurance, damages for pain and suffering, and to seek the establishment of a fund for medical monitoring and surveillance.

10. A class pursuant to 23(B)(1)(a) is appropriate because the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, especially in view of the

fact that Plaintiffs are alleging an intentional tort committed against the entire class and that Plaintiffs are seeking to compel Brush Wellman, by injunctive relief or other equitable relief, to establish a fund for medical monitoring and surveillance.

11. A class pursuant to 23(B)(1)(b) is appropriate because of the large number of current and former employees and family members (there are at least 8,000 class members). Such a class is appropriate in order to avoid adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interest of other members not party to the adjudications.

12. A class pursuant to 23(B)(2) is appropriate because the Defendants have acted or refused to act on grounds generally applicable to the entire class, thereby making appropriate final injunctive relief or other equitable relief, or corresponding declaratory relief, with respect to the class as a whole.

13. A class pursuant to 23(B)(3) is appropriate because the questions of law and fact common to members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

BACKGROUND FACTS

14. Beryllium is the fourth element on the periodic table (it has an atomic weight of 9.015) and is one-third lighter than aluminum, making it

one of the lightest metals. It is also one of the most rigid, with a stiffness six times greater than steel. On a weight basis, Beryllium absorbs five times more heat than copper, making it an excellent thermal conductor that resists the distorting effects of high temperatures.

15. Though Beryllium was discovered in 1797, useful products of Beryllium were not developed in the United States until 1916. Because of its unique combination of qualities, Beryllium is becoming an increasingly important material for an expanding range of commercial applications.

16. Beryllium is sold commercially in three forms: (1) pure Beryllium metal; (2) Beryllium alloys of copper, aluminum and nickel; and (3) powdered Beryllium oxide.

17. Pure Beryllium metal is used as a structural component helicopters, aircraft, missiles, satellites, and other aerospace applications where low weight and high stiffness are top priorities.

18. Beryllium copper is the most widely used Beryllium material. Beryllium copper is stronger and more fatigue resistant than copper.

19. Beryllium oxide powder is the raw material for Beryllia ceramics which have excellent electrical resistance. In this form, Beryllium is used in the electronics industry in the manufacture of such things as computer chips, electronic ignition systems, etc.

20. Beryllium is found in the earth and mined as Beryllium ore. The Beryllium is processed into Beryllium hydroxide which is then used to manufacture

Beryllium oxide and pure Beryllium.

21. Beryllium manufacturing processes can create dust, fumes or mist that can become airborne and inhaled by humans. In such form, Beryllium is a highly toxic material. When inhaled, approximately 1 to 2% of the population will develop a fatal pulmonary dysfunction known as Chronic Beryllium Disease.

22. There is no cure for Chronic Beryllium Disease. In most cases, the disease will get progressively worse over a period of years and ultimately result in a slow, agonizing death.

23. There is a latency period of some years between exposure to Beryllium and onset of the disease. The parameters of said latency period are currently unknown but experience has shown that it can be as short as one year or as long as 30 years or more.

24. In order for a person to get Chronic Beryllium Disease, three factors are necessary:

- A. The person must be sensitive to Beryllium;**
- B. The person must be exposed to airborne Beryllium particles;
and**
- C. The Beryllium particles must be of "respirable" size, i.e. ten microns or less.**

25. For years, Brush Wellman has publicly and privately asserted that only approximately 1% of the population can develop Chronic Beryllium disease; that is to say, if an entire population sample was exposed to even unlimited levels of airborne Beryllium, only 1% of that population would develop Chronic

Beryllium Disease.

26. In the early 1970's, the Occupational Safety and Health Administration (OSHA) adopted a standard of exposure to airborne Beryllium which was allegedly designed to protect employees from Chronic Beryllium Disease. Brush Wellman has for years stated publicly, and privately to its employees, that a person cannot get Chronic Beryllium Disease unless he suffers an exposure to airborne Beryllium in excess of the OSHA standard. The OSHA standard is an eight hour time weighted average of two micrograms of airborne Beryllium per cubic meter of air.

27. For many years, Brush Wellman has stated publicly, and privately to its employees, that Brush Wellman had instituted and effected protective measures and procedures within its manufacturing plants that were guaranteed to keep the level of exposure to airborne Beryllium to less than two micrograms per cubic meter of air for an eight hour time weighted average. As a result, employees have been assured for many years that they suffer no levels of airborne Beryllium exposure sufficient to cause Chronic Beryllium Disease.

28. In fact, the incidence of Chronic Beryllium Disease among the employees and ex-employees of Brush Wellman is approximately 4%! This is true in spite of the representations by Brush Wellman, that even if a population is exposed to unlimited levels of airborne Beryllium, the incidence of Chronic Beryllium Disease will only be 1%.

29. Brush Wellman and its Directors have known for some time that

the incidence of Chronic Beryllium Disease among its population of employees and ex-employees is higher than represented by Brush-Wellman. Yet, Brush Wellman has continued to advise its employees that they suffer no unreasonable risk of exposure to airborne Beryllium higher than the OSHA standard and that, therefore, a case of Chronic Beryllium Disease among said employees could only result from a "freak accident".

30. Defendant has continued to advise Plaintiffs that there is little or no risk of Chronic Beryllium Disease from working at Brush Wellman even though Defendant knows that is false.

31. In fact, Defendant has conspired to fraudulently conceal from Plaintiffs that the incidence of Chronic Beryllium Disease among employees and ex-employees is so high that it exceeds the expected incidence from unlimited exposure to airborne Beryllium.

32. The OSHA standard is not adequate to protect employees from being stricken with Chronic Beryllium Disease. Defendants have known for some time that said standard is inadequate for said protection and they have nonetheless continued to advise employees that they are safe from incurring Chronic Beryllium Disease as long as their exposure is less than the OSHA standard.

33. Defendant has fraudulently concealed from Plaintiffs the fact that the OSHA standard is inadequate to protect them from the risk of Chronic Beryllium Disease.

34. Defendant's attempts to monitor the level of airborne Beryllium in the workplace by the use of air filtration measurement devices. Reports have been made of these measurements and it is believed that these reports convey the false impression that employees of Brush Wellman are safe from the risk of Chronic Beryllium Disease.

35. Defendant knows that these reports do not accurately reflect the risk of Chronic Beryllium Disease to its employees, yet Defendant continues to use these reports to create the false impression among employees that they are safe from the risk of Chronic Beryllium Disease.

36. Based upon all the foregoing, Brush Wellman has made false and misleading public statements to the effect that its workers do not suffer the same risk of Chronic Beryllium Disease as persons exposed to an unlimited level of airborne Beryllium, even though Defendant knows that the risk of its employees incurring that disease is at least as high if not higher than the incidence of disease that normally occurs in persons subject to unlimited exposure.

37. In defense of legal claims against Brush Wellman by non-employees who have contracted Chronic Beryllium Disease, Defendant has taken the position that it is possible to handle its products without any risk of Chronic Beryllium Disease, if the persons handling said products follow the policies and procedures recommended by Brush Wellman. In fact, Brush Wellman knows that the evidence of Chronic Beryllium Disease among its own employees indicates that those policies and procedures do not at all protect the handlers of their

products from Chronic Beryllium Disease.

38. As set forth above, Defendant has made false public representations, has deliberately withheld material information, has systematically covered up evidence, has knowingly relied upon faulty data, and has engaged in fraudulent or, at least inequitable, conduct, all of which are related to the levels of exposure to airborne Beryllium that Plaintiffs were exposed to in the workplace and the potential harm therefrom. By its words, acts and omissions, Defendant intentionally gave Plaintiffs the false impression that they had not been exposed to hazardous levels of airborne Beryllium, which impression Plaintiffs could not dispel or disprove through due diligence. Plaintiffs reasonably relied upon Defendant's words and acts in refraining, until now, from commencing this action.

CAUSES OF ACTION

COUNT ONE

Intentional Tort

39. Plaintiffs incorporate paragraphs 1 through 38 by reference as if fully rewritten herein.

40. Exposure to airborne Beryllium dust is a dangerous condition which exists within the business operations of Brush Wellman.

41. Brush Wellman has, at all relevant times, had knowledge that airborne Beryllium does present a dangerous condition within its business

operations.

42. If the employees of Brush Wellman are subjected to said airborne Beryllium dust, it is substantially certain that said employees will suffer injury from said exposure.

43. Brush Wellman has, at all relevant times, had knowledge that if employees are subjected to airborne Beryllium dust, injury to said employees is substantially certain to occur.

44. The employees of Brush Wellman have been required by Brush Wellman to work in conditions where Brush Wellman knew that said employees would be exposed to airborne Beryllium dust, and that injuries to said employees were substantially certain to occur as a result.

45. Plaintiffs, and other members of the class, were required by Brush Wellman to work in circumstances as set out above.

46. Defendant, acting intentionally, willfully and/or knowingly that injury was substantially certain to occur, continued to expose Plaintiffs and other members of the class to said health hazards, failed to warn Plaintiffs of the hazards, and concealed critical information from Plaintiffs and/or the public concerning said risk in the work place.

47. As a direct and proximate result of Defendant's intentional conduct, Plaintiffs have suffered damages that include, but are not limited to, Chronic Beryllium Disease, loss of income, loss of jobs, diminished ability to secure employment and insurance, emotional distress, pain and suffering and other

damages.

48. Plaintiffs and other members of the class have been injured in the amount of \$100,000,000.

COUNT TWO

Fraudulent Concealment of Exposure

49. Plaintiffs incorporate paragraphs 1 through 48 by reference herein as though fully rewritten. As and for their second cause of action, Plaintiffs seek damages from Defendant for fraudulent concealment of Plaintiffs' excessive exposure to airborne Beryllium in the Brush Wellman workplace.

50. The Defendant at all times relevant hereto maintains a continuing economic interest in the operation of Brush Wellman. Distinct from Brush Wellman's role as employer, Defendant has also assumed the positions of physician and health and safety monitor for Brush Wellman workers.

51. Defendant intentionally failed to disclose to Plaintiffs material facts concerning the nature, magnitude and effects of the exposure to Plaintiffs to airborne Beryllium at Brush Wellman work sites.

52. Defendant made affirmative representations of material facts concerning the nature, quantity and effects of the release of and exposure to airborne Beryllium at the work places of Brush Wellman.

53. Defendant concealed, misrepresented and failed to disclose the truth with the intention of creating a false impression of the actual facts in

the minds of Plaintiffs and with the intention that Plaintiffs would refrain from seeking redress or pursuing remedial action.

54. Plaintiffs reasonably believed Defendant's misrepresentations and relied upon the same in refraining until the present from seeking redress or pursuing remedial action. During all times relevant hereto, employees of Brush Wellman were laid off or otherwise discharged for the purpose of minimizing expenses.

55. In the absence of Defendant's deception and fraud, Plaintiffs allege that these laid off or otherwise discharged employees would have been retained for the purpose of remedial actions related to minimization of exposure to airborne Beryllium, including but not limited to, planned improvements and preventative maintenance and repair of plant equipment and machinery.

56. As a further result of Defendant's deception and fraud, Plaintiffs and other members of the class have suffered other damage, including but not limited to, exposure to airborne Beryllium, Chronic Beryllium Disease, loss of income, loss of jobs, diminished ability to secure employment and insurance, pain and suffering and other damages.

57. As a direct and proximate result of Defendant's fraud and deception, Plaintiffs and the class members have been injured in as yet undetermined amounts but believed to be not less than \$100,000,000.

COUNT THREE

Punitive Damages

58. Plaintiffs incorporate by reference paragraphs 1 through 57 as though fully rewritten.

59. All of the acts and omissions alleged herein were intentional and demonstrate malice, aggravated or egregious fraud, oppression, or insult.

60. As a result of Defendant's malice, aggravated and egregious fraud, oppression and insult, Plaintiffs have suffered damages that include, but are not limited to, exposure to airborne Beryllium, Chronic Beryllium Disease, loss of jobs, loss of income, diminished ability to secure employment and insurance, emotional distress, pain and suffering and other damages. As a result, Plaintiffs and the members of the class are entitled to punitive damages in the amount of \$200,000,000, plus reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and class members pray for judgment to be entered in their favor, against Defendant jointly and severally as follows:

- A. Judgment ordering that, as soon as practicable, this action may proceed as a class action on behalf of the class identified herein;
- B. Reasonable medical monitoring and surveillance services for Plaintiffs and class members, including independent

scientific studies of adverse health effects upon class members from exposure to airborne Beryllium. Such services and studies must be administered on behalf of Plaintiffs and independently of Defendant, except that Plaintiffs respectfully request that the Court issue the appropriate injunctive relief compelling Defendant to (1) turn over all of the exposure and test data on Brush Wellman workers to Plaintiffs and to trustees appointed by the Court; (2) release all information necessary to reconstruct incidents of accidental exposure; and (3) Plaintiffs further request that the Court issue an injunction prohibiting Defendant from destroying existing data needed for medical monitoring or impeding the gathering of new data. Data generated by medical monitoring services and studies must be freely accessible to Plaintiffs and class members and to members of the public at large. This relief is necessary to ascertain the extent of the adverse impact of Defendant's conduct on Plaintiffs and class members. It is the only way by which to determine such adverse impact, to determine the increased risk of harm associated with emanating from Defendant's wrongful activities, and to protect the health and safety of all Plaintiffs and class members;

- C. Damages, compensation and redress to Plaintiffs and class members

for physical injuries, loss of income, loss of jobs, diminished ability to secure employment and insurance, emotional distress, pain and suffering and other damages in the amounts set out in each count hereof;

- D. Punitive damages in the amount of \$200,000,000;
- E. Interest on the above amounts as allowed by law;
- F. An award of attorneys' fees and costs;
- G. Such other and further relief as warranted in the interest of justice.

Respectfully submitted,



EDWARD W. COCHRAN (0032942)



GEORGE W. COCHRAN (0031691)
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Shaker Heights, Ohio 44120
(216) 751-5546

Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

A handwritten signature in black ink, appearing to read "Ed W Cochran", written over a horizontal line.

EDWARD W. COCHRAN (0032942)